

1
2
3
4
5
6
7
8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 NORA PULIDO,

12 Plaintiff,

CIV S-05-0678 FCD JFM PS

13 v.

14 UNITRIN, INC., ET AL.,

15 Defendants

ORDER

16 _____/
17 Presently calendared for hearing on September 29, 2005 is defendants' motion to
18 dismiss. Pursuant to Local Rule 78-230(h), the court has determined that the matter will be
19 submitted on the papers without oral argument. Upon review of the motion and the documents in
20 support and opposition, and good cause appearing therefor, THE COURT MAKES THE
21 FOLLOWING FINDINGS:

22 On August 19, 2005, plaintiff was ordered to show cause why this action should
23 not be dismissed for her failure to comply with Fed. R. Civ. P. 4(m). On August 25, 2005,
24 plaintiff filed a proof of service of summons indicating service of process had been accomplished
25 by substituted service, personally delivering service to Christine Landin, Receptionist at Peter A.
26 Meshot's office, and thereafter mailing a copy of service on April 29, 2005. On August 26,

1 2005, defendants filed a motion to dismiss for insufficiency of service of process and failure to
2 timely accomplish service of process. Fed. R. Civ. P. 4(m). Counsel for defendants declares he
3 has not been authorized or appointed as an agent for service of process for any defendant herein,
4 and so advised plaintiff.

5 Plaintiff has filed an opposition in which she acknowledges that Mr. Meshot is not
6 the registered agent for service of process, but claims she believed Mr. Meshot and plaintiff
7 could come to an agreement as to service of process. Plaintiff argues that the state allows
8 plaintiff up to three years to serve process and, in the court's discretion, state courts may extend
9 the time even further. Plaintiff states she has made arrangements to effect service by the date of
10 the hearing on defendants' motion.

11 In their reply, defendants contend plaintiff has not been diligent as this case was
12 commenced on April 7, 2005, and plaintiff has not promptly executed service of process on
13 defendants. Defendants note plaintiff has made no effort to serve defendant Kemper.

14 Plaintiff is advised the August 25, 2005 certificate of service does not comply
15 with Federal Rule of Civil Procedure 4(h). Plaintiff must serve the corporation's registered agent
16 for service of process. This court is governed by Fed. R. Civ. P. 4(m) which requires service of
17 process to be effected within 120 days after the filing of the complaint. (*Id.*) Service of these
18 documents must specifically follow the instructions set forth in Rule 4(h).

19 However, the court may, in its discretion, extend the time for service of process
20 "even without a showing of good cause." United States v. 2,164 Watches, More or Less, Bearing
21 a Registered Trademark of Guess?, Inc., 366 F.3d 767, 772 (9th Cir. 2004)(citations omitted).
22 See also Fed. R. Civ. P. 4(m) advisory committee's note (1993 amendments) (Rule 4(m)
23 "explicitly provides that the court shall allow additional time if there is good cause" . . . and
24 authorizes the court to relieve such failure "even if there is no good cause shown. . ."). Thus,
25 plaintiff will be provided one final opportunity to accomplish service of process on defendants.
26 Plaintiff is cautioned that failure to effect service and file the requisite return of service with the

1 court within the time specified will result in a recommendation that this action be dismissed. No
2 further extensions of time will be granted.

3 In light of the above, this court will discharge the August 19, 2005 order to show
4 cause, vacate the September 29, 2005 hearing on defendants' motion to dismiss, and reset this
5 matter for scheduling conference.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The August 19, 2005 order to show cause is discharged;
- 8 2. The September 29, 2005 hearing date is vacated;
- 9 3. Defendants' August 26, 2005 motion to dismiss is denied without prejudice;
- 10 4. Within thirty days from the date of service of this order, plaintiff shall file a
11 proof of service indicating service of process in compliance with Federal Rule of Civil Procedure
12 4(h) and service of a copy of this order on defendant; and
- 13 5. This matter is set for scheduling conference on December 8, 2005 at 11:00
14 a.m. before the undersigned.

15 DATED: September 19, 2005.

16
17 
18 UNITED STATES MAGISTRATE JUDGE

19 /01; pulico.4h
20
21
22
23
24
25
26